

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DENNIS JOHN TIMS,

Plaintiff,

v.

DAVE FIELDS and
NURSE KLOVAS,

Defendants.

ORDER

19-cv-508-wmc

Pro se plaintiff Dennis John Tims is proceeding to trial on his Fourteenth Amendment claims against Physician Assistant Dave Fields and Nurse Klovas, for allegedly failing to provide Tims needed dental care in 2019 while held at the Clark County Jail. Today the court held a status conference by Zoom to address Tims' motions for continuance (dkt. #208) and to request service of trial subpoenas (dkt. #212). Tim appeared *pro se*, while defendants Fields and Klovas were represented by attorneys Alyssa Chojnacki and Molly Woodford, respectively. Following discussion, during the hearing Tims withdrew his motion for a continuance (dkt. #208), and defendants agreed that this case can proceed to trial as scheduled. Following further discussion of Tims' request for issuance of trial subpoenas (dkt. #212), the court:

- GRANTED plaintiff's request as to Inmate Jonathan Churkey and Brent King for their testimony by videoconference;
- DENIED plaintiff's request as to Gregory Herrick, Melissa Inlow, Dr. Kristen Wells, Dr. Anthony Schwigel, Nicholas Brazeau Jr., and Leonard Mesar; and

- RESERVED plaintiff's request as to Dr. Amy Schnieder, Dr. Steven Kinziger, Dr. David Walther, Dr. Paul Ganshert, Dr. Karen Shonike, Dr. Robert Jerome, Emily (Kinziger's assistant), Jaimie Gomez, and Laci Tlusty.

As for the reserved witnesses, the court directed Tims to clarify how each of them was involved in his medical care, and to designate as exhibits any medical records that involve these witnesses. Tims should also state which witnesses he wants to appear in person, understanding that the court is not inclined to allow him to call more than a few, in-person witnesses. Those follow-up submissions are due May 22, 2023, along with any other pretrial submissions due at that time.

The court further explained that before issuing any subpoenas, Tims may owe a witness fee and mileage/per diem for the unincarcerated witnesses. Tims does *not* owe a witness fee for incarcerated witness Churkey, but he will owe a witness fee and mileage/per diem for Brent King. Because King will appear via videoconference, not in person, by May 22, 2023, Tims must remit the \$40 witness fee in check form made out to "Brent King." Also by May 22, Tims must remit checks for the same amount for any other witness he wishes to have appear by videoconference. For any witness Tims wishes to appear in person, he must calculate the additional mileage/per diem payment he would need to pay. By statute, the current mileage reimbursement rate is \$0.58 per mile, and the per diem payment is \$195, if the witness is traveling overnight.

Finally, Tims raised a concern that he has been unable to review his medical records under the control of Waupun Correctional Institution despite making multiple, written requests. The court assured Tims that it will intervene if necessary to ensure that he can

review and make copies of his medical records to prepare for trial. Although the court expects that Waupun's officials will promptly facilitate Tims' requests for access to his medical records without court intervention, the court further advised that Tims should notify the court by May 24, 2023, if he is unable to review and copy relevant portions of his medical records for use at trial.

ORDER

- 1) Plaintiff John Tims' motion for continuance (dkt. #208) is DENIED as withdrawn.
- 2) Tims' motion for issuance of subpoenas (dkt. #212) is GRANTED in part, DENIED in part and RESERVED in part as set forth above.
- 3) The clerk of court is directed to arrange with prison officials at Stanley Correctional Institution, where Inmate Jonathan Churkey (#563278) is incarcerated, for his videoconference testimony at trial on Monday June 12, 2023.
- 4) By May 22, 2023, Tims must remit a check made out to "Brent King" in the amount of \$40, to facilitate the service of the subpoena on King for his testimony at trial via videoconference. Once the court receives that payment, it will issue an order directing issuance of the subpoena for his appearance.
- 5) Also by May 22, 2023, Tims must remit checks in the appropriate amount made out to any other witness who he wishes to testify by videoconference. For any request for issuance of subpoena that the court denies, the clerk of court will return to Tims the corresponding check.

- 6) If Tims cannot afford these fees, he needs to write to the court immediately demonstrating his inability to pay with an up-to-date prisoner trust account statement.
- 7) The clerk of court is directed to forward this order to Waupun's litigation coordinator to ensure that Tims has access to his medical records.

Entered this 18th day of May, 2023.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge